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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KINNICK B. SANFORD, JR.,)

11 Petitioner,)

12 v.)

13 KENNETH QUINN,)

14 Respondent.)

CASE NO. C07-1304-JCC-JPD

REPORT AND RECOMMENDATION

15 INTRODUCTION AND SUMMARY CONCLUSION

16 Petitioner is a state prisoner who is currently confined at the Monroe Correctional Complex
17 in Monroe, Washington. He seeks relief under 28 U.S.C. § 2254 from the sentence imposed
18 following his conviction in King County Superior Court on charges of second degree robbery and
19 first degree escape. Respondent has filed an answer to petitioner's federal habeas petition in which
20 he argues that the petition is time-barred under the federal statute of limitations, 28 U.S.C. §
21 2244(d). Petitioner has filed a response to respondent's answer. This Court, having reviewed
22 petitioner's petition, respondent's answer, petitioner's response thereto, and the balance of the
23 record, concludes that petitioner's federal habeas petition should be dismissed as untimely.

24 PROCEDURAL HISTORY

25 On September 30, 1998, petitioner was found guilty, following a jury trial, on one count of
26 robbery in the second degree and one count of escape in the first degree. (*See* Dkt. No. 11, Ex. 1

1 at 1.) At his sentencing hearing on February 22, 1999, petitioner was found to be a persistent
2 offender and was sentenced to a term of life in prison without the possibility of parole. (Dkt. No.
3 11, Ex. 1 and Dkt. No. 13, Appendix 1 at 35-37.)

4 Petitioner appealed his judgment and sentence to the Washington Court of Appeals. (Dkt.
5 No. 11, Ex. 2.) On July 17, 2000, the Court of Appeals affirmed petitioner's judgment and
6 sentence. (*Id.*, Ex. 3.) Petitioner petitioned for review by the Washington Supreme Court and, on
7 November 21, 2001, the Supreme Court affirmed the Court of Appeals in a published opinion.
8 (*Id.*, Ex. 4.) Petitioner thereafter petitioned for a writ of certiorari. (*See id.*, Ex. 5.) The United
9 States Supreme Court denied the petition on April 29, 2002. (*Id.*)

10 On February 10, 2005, petitioner signed a motion to vacate his judgment and sentence
11 which he filed in the King County Superior Court. (*Id.*, Ex. 6.) Petitioner's motion was transferred
12 to the Washington Court of Appeals for consideration as a personal restraint petition, and the
13 petition was dismissed on October 11, 2005. (*Id.*, Ex. 7.) Petitioner next moved for discretionary
14 review in the Washington Supreme Court. (*Id.*, Ex. 8.) The Supreme Court Commissioner denied
15 review on November 30, 2005. (*Id.*, Ex. 9.) Petitioner moved to modify the commissioner's
16 ruling, but the Supreme Court denied that motion on January, 31, 2006. (*Id.*, Exs. 10 and 11.)

17 On June 6, 2006, petitioner filed a second personal restraint petition. (*Id.*, Ex. 12.) The
18 Washington Court of Appeals dismissed the petition as both successive and untimely. (*Id.*, Ex. 13.)
19 Petitioner moved for discretionary review in the Washington Supreme Court. (*Id.*, Ex. 14.) The
20 Supreme Court Commissioner denied review on March 19, 2007. (*Id.*, Ex. 15.) Petitioner moved
21 to modify the commissioner's ruling, but the Supreme Court denied that motion on June 6, 2007.
22 (*Id.*, Exs. 16 and 17.)

23 Petitioner now seeks federal habeas review of his judgment and sentence. Petitioner signed
24 his federal habeas petition on August 10, 2007, and the petition was filed in this Court on August
25 21, 2007. (*See* Dkt. No. 1.)
26

1 The statute of limitations is also subject to equitable tolling. *Laws v. Lamarque*, 351 F.3d
2 919, 922 (9th Cir. 2003). However, the Ninth Circuit has made clear that equitable tolling is
3 available “only when extraordinary circumstances beyond a prisoner’s control make it impossible to
4 file a petition on time and the extraordinary circumstances were the cause of his untimeliness.” *Id.*
5 (internal quotation and citation omitted). Petitioner asserts in his response to respondent’s answer
6 that he is entitled to equitable tolling of the federal statute of limitations because he diligently
7 pursued his claims in the state courts and the highest state court failed to reach the merits thereby
8 standing in the way of petitioner obtaining relief.

9 The record reflects that petitioner’s federal habeas claims were presented to the state courts
10 for the first time, if at all, in his motion to vacate sentence. As noted above, petitioner did not file
11 his motion to vacate sentence until well after the federal statute of limitations had already expired.
12 Petitioner offers no evidence that he was somehow precluded from pursuing his claims in the state
13 courts at an earlier date. Petitioner therefore fails to establish that he is entitled to equitable tolling.

14 As noted above, petitioner did not sign his federal habeas petition until August 10, 2007,
15 over four years after the statute of limitations expired on April 29, 2003. Because petitioner filed
16 his petition outside of the § 2254 statute of limitations period, and because petitioner has not
17 demonstrated that he is entitled to either statutory or equitable tolling of the limitations period, his
18 petition is time-barred. This Court therefore recommends that petitioner’s federal habeas petition
19 be dismissed, with prejudice, pursuant to 28 U.S.C. § 2244(d). A proposed order accompanies this
20 Report and Recommendation.

21 DATED this 30th day of January, 2008.

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23 
24 JAMES P. DONOHUE
United States Magistrate Judge